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SENATE BILL 364

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Leonard Lee Rawson

AN ACT

**RELATING TO HEALTH; ENACTING THE BODY ART SAFE PRACTICES ACT;
ESTABLISHING MINIMUM SAFE PRACTICES; PROHIBITING TONGUE-
SPLITTING; ESTABLISHING THE BODY ART SAFE PRACTICES FUND;
PROVIDING A PENALTY; MAKING AN APPROPRIATION.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the
"Body Art Safe Practices Act".

Section 2. PURPOSE. -- The purpose of the Body Art Safe
Practices Act is to provide a safe and healthy environment for
body art.

Section 3. DEFINITIONS. -- As used in the Body Art Safe
Practices Act:

**A. "body art" means tattooing, body piercing or
scarification but does not include practices that are**

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1 considered medical procedures by a state medical board;

2 B. "body art establishment" means the premises
3 where body art is administered, either fixed or mobile;

4 C. "body piercing" means cutting, stabbing or
5 penetrating the skin to create a permanent hole or opening;

6 D. "department" means the department of health;

7 E. "employee" means a person who administers body
8 art and who is employed in a body art establishment;

9 F. "equipment" means all machinery, including
10 fixtures, containers, vessels, tools, devices, implements,
11 furniture, display and storage areas and sinks, used in
12 connection with the operation of a body art establishment;

13 G. "instrument" means sharps and other instruments
14 that may come into contact with a person's body during the
15 administration of body art;

16 H. "operator" means the owner or the owner's agent
17 in charge of a body art establishment;

18 I. "scarification" means cutting into the skin with
19 a sharp to produce a permanent mark or design on the skin;

20 J. "sharp" means a sterilized object that is used
21 to penetrate the skin or mucosa, including needles, scalpel
22 blades and razor blades;

23 K. "single-use" means products or items that are
24 intended for one-time, one-person use and are disposed of after
25 use, including cotton swabs or balls, tissues or paper

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1 products, paper or plastic cups, gauze and sanitary coverings,
2 sharps, stencils, ink cups and protective gloves;

3 L. "sterilization" means destruction of all forms
4 of microbiotic life, including spores;

5 M "tattooing" means the practice of depositing
6 permanent, semipermanent or temporary pigment into the
7 epidermis using needles and includes permanent cosmetics,
8 dermatography, micropigmentation, permanent color technology and
9 micropigment implantation; and

10 N. "tongue-splitting" means the practice of cutting
11 a human tongue into two or more parts in a body art
12 establishment.

13 Section 4. TONGUE-SPLITTING PROHIBITED. --A person may not
14 perform tongue-splitting in a body art establishment. The
15 department shall promulgate rules regulating tongue-splitting.

16 Section 5. CONSENT. --A body art establishment shall,
17 prior to administering body art, require proof that a customer
18 is eighteen years of age or older. If a customer is under
19 eighteen years of age, the body art establishment shall
20 require:

21 A. a notarized informed consent form from the
22 customer's parent or guardian before administering body art; or

23 B. the presence of the customer's parent or
24 guardian during the administration of the body art.

25 Section 6. EXEMPTION. --A person who pierces only the

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1 outer perimeter and lobe of the ear using a presterilized
2 encapsulated single-use stud ear-piercing system and who
3 implements appropriate procedures is exempt from the
4 requirements of the Body Art Safe Practices Act. A person who
5 uses such ear-piercing systems shall conform to the
6 manufacturer's directions and applicable United States food and
7 drug administration requirements. All ear piercers shall
8 employ handwashing or use of an antibacterial gel and wear
9 disposable medical gloves, which are to be discarded after use
10 for each customer. The department may investigate consumer
11 complaints relating to alleged misuse or improper procedures
12 involving ear-piercing systems.

13 Section 7. LICENSE--APPLICATION--REVOCATION--
14 SUSPENSION.--

15 A. A person shall not operate a body art
16 establishment without a valid license for that body art
17 establishment issued by the department in accordance with the
18 Body Art Safe Practices Act and rules promulgated pursuant to
19 that act. An operator shall have a separate license for each
20 body art establishment. The license shall be posted in a
21 conspicuous place in the body art establishment. An operator
22 shall not display a license unless it has been issued for that
23 body art establishment and it has not been suspended or
24 revoked. Licenses shall be renewed annually.

25 B. A person shall apply to the department for a

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1 body art establishment license. Applications shall be made in
2 the form prescribed by the department. The body art
3 establishment for which the applicant seeks licensure shall
4 meet department health and safety requirements and may be
5 inspected by the department prior to issuance of a license.

6 C. The department shall charge a fee not to exceed
7 one hundred fifty dollars (\$150) for the application or renewal
8 of a license.

9 D. The department shall promulgate rules for the
10 denial, revocation or suspension of licenses in accordance with
11 the Uniform Licensing Act. A license may be denied if the
12 operator has had a similar license suspended or revoked in this
13 or another jurisdiction within the last five years. An
14 inspection made more than twenty-four months prior to the most
15 recent inspection shall not be used as a basis for suspension
16 or revocation. A person aggrieved by a decision of the
17 department pursuant to this section may appeal to the district
18 court as provided in Section 39-3-1.1 NMSA 1978.

19 E. A license to operate a body art establishment
20 shall not be transferable.

21 F. Persons engaged in the body art business before
22 the effective date of the Body Art Safe Practices Act shall
23 have one hundred twenty days to comply with the licensing
24 requirements.

25 G. The following information shall be kept on file

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1 on the premises of the body art establishment and available for
2 inspection by the department:

3 (1) the full names of all employees in the
4 body art establishment and their exact duties;

5 (2) the following information pertaining to
6 all employees:

7 (a) date of birth;

8 (b) gender;

9 (c) home address; and

10 (d) phone number;

11 (3) identification photographs of all
12 employees;

13 (4) the body art establishment's name and
14 hours of operation;

15 (5) the name and address of the operator;

16 (6) a complete description of all body art
17 performed; and

18 (7) a list of all equipment, instruments, body
19 jewelry and inks used, including names of manufacturers and
20 serial or lot numbers or invoices or their documentation
21 sufficient to identify and locate the manufacturer.

22 Section 8. SANITATION AND STERILIZATION. -- The department
23 shall adopt rules pertaining to sanitation; sterilization of
24 equipment and nondisposable instruments; the use of sharps,
25 stencils and other single-use items; and other public health

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1 concerns in body art establishments.

2 Section 9. DISEASE CONTROL. -- Any skin or mucosa surface
3 that is to receive a body art procedure shall be free of rash,
4 infection or any other visible active pathological condition.
5 The skin of an employee shall be free of rash, infection or any
6 other visible pathological condition.

7 Section 10. INSPECTION BY DEPARTMENT. --

8 A. The department shall annually inspect body art
9 establishments to determine compliance with the Body Art Safe
10 Practices Act. A department inspector may enter and inspect
11 the premises and records of a body art establishment at any
12 reasonable time. The operator or an employee shall be given an
13 opportunity to accompany the department inspector on the
14 inspection and to receive the report of the inspection within
15 fourteen days after the inspection. Refusal to allow an
16 inspection is grounds for revocation of the license of the
17 operator if the department inspector tendered proper
18 identification prior to the refusal.

19 B. During an inspection, the department inspector
20 may take samples of equipment and supplies on the premises for
21 the purpose of determining compliance with the provisions of
22 the Body Art Safe Practices Act. The department shall return
23 samples of equipment or supplies after the investigation is
24 completed.

25 Section 11. IMMEDIATE SUSPENSION. -- The department may

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1 suspend a license immediately without prior notice to the
2 license holder if it determines, after inspection, that
3 conditions in the body art establishment present a substantial
4 danger of illness, serious physical harm or death to patrons of
5 the body art establishment. A suspension action taken pursuant
6 to this section is effective when communicated to the operator
7 or an employee on the premises. If there is no designated
8 person in charge of the premises, communication to an employee
9 physically present on the premises is sufficient communication
10 to make the suspension effective. A suspension action taken
11 pursuant to this section shall not continue beyond the time
12 that the conditions causing the suspension cease to exist, as
13 determined by an inspection by the department at the request of
14 the operator.

15 Section 12. BODY ART SAFE PRACTICES FUND. --The "body art
16 safe practices fund" is created in the state treasury. License
17 fees imposed by the department shall be deposited in the fund.
18 The fund shall consist of license fees and interest earned on
19 investment of the fund. Any balance remaining in the fund at
20 the end of a fiscal year shall not revert to the general fund.
21 The fund shall be administered by the department, and money in
22 the fund is appropriated to the department to carry out the
23 provisions of the Body Art Safe Practices Act. Disbursements
24 from the fund shall be by warrant of the department of finance
25 and administration upon vouchers signed by the secretary of

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1 health or the secretary's authorized representative.

2 Section 13. MUNICIPALITIES. --The Body Art Safe Practices
3 Act provides minimum standards for safe body art practices. A
4 municipality may by ordinance provide more stringent standards.

5 Section 14. PENALTY. --

6 A. The department may seek relief in district court
7 to enjoin the operation of a body art establishment not
8 complying with the provisions of the Body Art Safe Practices
9 Act.

10 B. The district court may impose a civil penalty of
11 not more than five hundred dollars (\$500) on a person who
12 violates a provision of the Body Art Safe Practices Act. Each
13 violation constitutes a separate offense.

14 Section 15. SEVERABILITY. --If any part of the Body Art
15 Safe Practices Act is held invalid, the remainder or its
16 application to other situations or persons shall not be
17 affected.